

**REMARKS**

Claims 26 to 28 are added, and therefore 12 to 19 and 26 to 28 are now pending and being considered in the present application (since claims 20 to 25 were previously withdrawn in response to a restriction requirement).

In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received from the International Bureau.

With respect to paragraph four (4) of the Office Action, claims 12 and 14 to 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,304,805 ("Onogi").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Final Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 12 is to a method for rollover stabilization of a vehicle in a critical driving situation, including estimating information from a relationship between a steering variable and a roll variable, the information relating to a rollover tendency of the vehicle and being taken into account in a scope of the rollover stabilization. The Office Action conclusorily asserts that the

Onogi reference discloses this feature. In fact, however, the Onogi reference does not identically disclose (or even suggest) the feature of information relating to a rollover tendency of a vehicle being taking into account in a scope of the rollover stabilization, as provided for in the context of the presently claimed subject matter.

The Office Action cites Figures 14 and 15, and column 25, line 56 to column 26, line 56, as disclosing this feature. The cited material only refers to an overturn parameter  $X$  that is calculated from body speed  $V_{b0}$  and the roll angle  $\phi_0$ . The overturn parameter  $X$  is used, as in Figure 5 of the Onogi reference, to determine whether or not a braking force needs to be increased. The increase in braking force is part of a rollover stabilization, and is used to prevent rolling of the vehicle under certain dangerous conditions. The overturn parameter  $X$ , however, is not identically disclosed (or even suggested) as taking into account the scope of the rollover stabilization. The overturn parameter  $X$  is not used to determine by how much the brake force is increased.

In stark contrast, claim 12 features a scope of the rollover stabilization that takes information relating to a rollover tendency into account. As described, for example, at page 3, lines 9 to 19 of the Specification, the rollover tendency is used in the calculation of the indicator variable  $S$  and/or other properties, and influences the stabilization action. The present application does not merely answer the question of whether stabilization action is required, but also what the scope of that stabilization action should be. Because the Onogi reference does not take such information into account in a scope of a rollover stabilization, the Onogi reference cannot and does not identically disclose (or even suggest) all of the features of claim 12, so that claim 12 is allowable, as are its dependent claims 14 to 16. Withdrawal of the present rejections is therefore respectfully requested.

With respect to paragraph seven (7), claims 13 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Onogi reference in view of Japanese Patent Application Publication No. JP63116918 ("Takumi").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or

suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 13 and 17 depend from claim 12, and are therefore allowable for essentially the same reasons, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference. Withdrawal of the present rejections is therefore respectfully requested.

With respect to paragraph eight (8) of the Office Action, claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Onogi reference in view of the Takumi reference and in further view of U.S. Patent No. 6,498,967 (“Ehlbeck”).

Claims 18 and 19 depend from claim 12, and are therefore allowable for essentially the same reasons, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference. Withdrawal of the present rejections is therefore respectfully requested.

New claims 26 to 28 do not add any new matter and are supported by the present application. Claims 26 to 28 depend from claim 12, as presented, and are therefore allowable for the same reasons.

Accordingly, claims 12 to 19 and 26 to 28 are allowable.

**CONCLUSION**

In view of the foregoing, it is respectfully submitted that all of the presently pending and considered claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. All issues raised by the Examiner have been addressed, and therefore an early and favorable action of the merits is respectfully requested.

Respectfully submitted,  
KENYON & KENYON

Dated: 10/6/2008

By: 

Gerard A. Messina  
Reg. No. 35,952

One Broadway  
New York, NY 10004  
(212) 425-7200

CUSTOMER NO. 26646

*Res me.  
33865*

*Adrian C  
O'Neil*